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General Principles of  
International Law  
Affecting Western Canada-U.S.  
Border Relations

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Border Relations

A Background Document

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by Stephen Maly, Research Associate

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GENERAL PRINCIPLES OF INTERNATIONAL LAW  
AFFECTING WESTERN CANADA-U.S. BORDER RELATIONS

Thou Shalt Not Pollute Thy Neighbor

Article 38 of the Statute of the International Court of Justice is widely regarded as the most universally authoritative guide to the sources of International Law, which are identified as follows:

- a) international conventions [treaties], whether general or particular, establishing rules expressly recognized by the contesting states;
- b) international custom, as evidence of a general practice accepted as law;
- c) the general principles of law recognized by civilized nations, and
- d) ...judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The 1909 Treaty Relating to Boundary Waters and Questions along the boundary between Canada and the United States is often cited by scholars and diplomats as one of the first--if not the first--examples of an internationally agreed duty not to pollute. A provision of Article IV of the Treaty expressly enjoins the signatory states from polluting waters to "the injury of health or property of the other."

The Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law



Association (a professional body of respected jurists and scholars), contains specific clauses which require states to:

- a) prevent any new form of pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin state, and
- b) to take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin state.

These rules are not binding upon states in a formal legal sense, but constitute evidence of customary practice and a subsidiary means of determining International Law.

#### Thou Must Cooperate--and Compensate

Principle 22 of the Stockholm Declaration on the Human Environment enunciates the popular conviction that "States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction." The Stockholm document stresses common action in reaching equitable agreements. Article XI of the Helsinki Rules declares that if a violation of the earlier prevention principle occurs, "the state responsible shall be required to cease the wrongful conduct and compensate the injured co-basin state for the injury that has been caused to it." In the event that the polluting state fails to take all reasonable abatement measures, it must enter into negotiations with the injured state "with a view towards reaching a settlement equitable under the circumstances."





The Organization for Economic Cooperation and Development (OECD), of which both Canada and the United States are members, has adopted the polluter pays principle, whereby the waste discharger must pay for any ameliorating measures which are caused to be taken as a result of its activities. OECD also adopted a recommendation on Principles Concerning Transfrontier Pollution which includes a specific duty to warn "other potentially affected countries of any situation which may cause any sudden increase in the level of pollution in areas outside the country of origin of pollution, and take all appropriate steps to reduce the effects of any such sudden increase." More recent OECD guidelines state that "Governments will cooperate towards solving Transfrontier problems in a spirit of solidarity and with the intention of further developing international law in this field."

International cooperation on transfrontier pollution is described in a 1979 OECD's document as having three degrees of intensity: concerted action, consultation, and joint management; and taking place at three levels: local, regional, and national. In the U.S.-Canadian context, "concerted action" involves the ongoing diplomatic activities of the U.S. Department of State and Canada's Department of External Affairs, as well as other high level meetings and discussions between executive officials. "Consultation" brings Congress and Parliament into the action (through hearings and interparliamentary sessions), and "joint management" describes the operations of the International Joint Commission. Local level cooperation might involve two adjacent



cities such as Detroit and Windsor. Due to the federal structure of both governments, regional cooperation generally involves a combination of state/provincial, local, and federal authorities, whereas national level cooperative activities place the central governments at the forefront.

#### What's Mine is Mine, and Other General Principles

Among the general principles of law "recognized by civilized nations" are:

- SOVEREIGNTY - whereby states exercise exclusive and independent control over citizens and territory (including natural resources) within legally determined geographic limits;
- RECIPROCITY - connoting mutual commitment and obligation to the terms of agreements reached or proposed by states;
- STATE RESPONSIBILITY - which holds that a government is liable for damages against another state caused by public or private entities and individuals within its jurisdiction, and
- PEACEFUL SETTLEMENT OF DISPUTES - a principle included in the United Nations Charter designed to prevent and forestall conflicts which might endanger international peace and security.

#### Sovereignty

The principle of sovereignty regarding exclusive jurisdiction over the use and apportionment of transboundary water courses was amended somewhat by the Boundary Waters Treaty of 1909. Prior to the Agreement with Canada, the United States had proclaimed its adherence to the so-called Harmon Doctrine (named after a U.S. Attorney General of 1895), which held that international law imposed no duty upon the United States to



withhold from or deny access to its citizens waters which at some distant juncture downstream crossed the border. While some Canadians were leery of Article II of the Treaty at the time it was being negotiated--an article which retained the exclusive jurisdiction and control over the use and diversion of all waters on each state's side of the frontier line, other concessions, including the pollution clause in Article IV, helped to conclude the agreement after long and difficult negotiations. The concern for sovereignty continues to be a major obstacle to fully effective environmental cooperation and integrated international river development.

Some legal scholars assert that environmental integrity is an integral part of territorial sovereignty. Both the Boundary Waters Treaty and the Great Lakes Water Quality Agreement of 1972 have been cited as positive evidence of this development in international legal doctrine, the former for having established the principle, and the latter for having assumed it.

### Reciprocity

Reciprocity is closely connected with the concept of the sovereign equality of states. Generally speaking, the principle serves as a guarantee of fairness in negotiated settlements between states unequal in physical measure and in terms of political and military strength. Like sovereignty, it can either provide legal protection of environmental quality or diminish the possibility that two (or more) countries will act faithfully and forcefully to implement a pollution agreement. If one country lags behind in fulfilling its share of the bargain, the other has



a reasonable incentive to cut back its own efforts (and costs!) to meet tough air and water quality standards.

### State Responsibility

The Trail Smelter Arbitration of 1931 was a milestone in establishing state responsibility for environmental injury. An arbitral tribunal found that the Dominion of Canada was legally responsible for the conduct of a privately-owned company in Canadian territory whose smelting operations damaged air quality south of the border, and consequently Canada was forced to pay an indemnity to the United States in compensation for the injury.

### Peaceful Settlement of Disputes

Article 33 of the U.N. Charter sets forth the following peaceful means by which to seek a solution to an international dispute: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements and other means chosen by the parties to the conflict. Of these, negotiation is by far the method most often used by Canada and the United States with regard to environmental disputes. Agreements between the two countries seldom provide for compulsory third-party participation, such as referral to the World Court for adjudication or binding arbitration in the event of a dispute. Practice shows a real reluctance to litigate or arbitrate their differences if a negotiated settlement is possible. Trail Smelter being the notable exception, as a rule the United States and Canada obviously have preferred to haggle





and bargain over issues rather than accept the decision of an outside authority.

Why is this so? Compromises have been regarded as safer than arbitration, which puts everything at risk. Each side has been able to salvage enough of its position so as to protect their state's basic position. Moreover references to the World Court or to arbitrators can cause political problems, since a decision can be rendered at a time (e.g. during an election campaign) which is disadvantageous to one or the other's government in power.

The International Joint Commission is empowered by Article X of the Boundary Waters Treaty to act as an arbitral tribunal with respect to matters submitted to it, but there has never been an instance where this capacity was invoked by either the United States or Canada. The IJC has instead always served as a mechanism for adjustment, and none of its decisions and recommendations have been binding upon the two states which enlist its assistance to investigate pollution issues and other matters of joint concern. Although arbitration can be a uniquely useful technique for resolving conflicts, it lacks the adaptability and pragmatic aspects of political settlements, and the parties involved in an arbitration proceeding often encounter problems and delay in reaching agreement on the arbitrators, and the means of carrying out the process.

The concepts of externalities and common property resources are basic to an understanding of transboundary pollution and they



supply an economic rationale for peaceful and reciprocal agreements to share the benefits derived from international rivers and boundary waters. Pollution of the Great Lakes can have a direct impact on the welfare and economic productivity of both the U.S. and Canada. The primary incentive to reach agreement is to avoid the "tragedy of the commons." In the case of international rivers, each riparian state is naturally inclined to appropriate the waste assimilative capacity of the water course or the water itself in order to increase its own benefits. But the river may be depleted or severely damaged if the costs are not borne by a country in proportion to the use it makes of the resource. The benefits from reaching agreement are more significant to each user when the total number of users is small (as in the case of the United States and Canada), and the incremental costs felt by each riparian from its own or the other country's harmful actions are likewise larger and more apparent.

The development of international legal principles is a slow process of incremental evolution. International law with respect to environmental protection is at a embryonic stage and governments have been slow in coping with the problems posed by transboundary pollution. While administrative and judicial instruments to deal with environmental problems are usually well-established at the national level, they are often absent at the international level. As a result the joint bodies established to frame solutions, settle conflicts and finance remedial action almost always have to be re-created for every issue that arises and frequently operate on an ad hoc basis. While the ad hoc



approach to specific problems still largely applies to environmental problems which arise between the United States and Canada, the International Joint Commission is a long-standing body specifically designed to negotiate settlements. The Boundary Waters Treaty set a precedent early-on in the growth of bilateral relations between the U.S. and Canada with respect to transboundary pollution, and indeed that precedent carried significant weight in the overall development of international principles. The same is true of the Trail Smelter arbitration. Thus U.S.-Canadian relations regarding transboundary pollution not only conform in large part to the legal principles and guidelines set forth by law-making bodies and associations of prominent legal scholars, but a number of specific cases have, in fact, provided essential raw materials for the development of international law.

#### THE BILATERAL SETTING

Environmental disputes between the United States and Canada cannot be adequately understood in isolation from other significant aspects of the geography and political economy of North America. The two countries share a border (including the Alaska-Canada frontier) 5,526 miles in length, 2,381 miles of which are water. The Great Lakes (excluding Lake Michigan) constitute the bulk of what are considered boundary waters, but a number of large rivers, such as the St. Lawrence and Columbia, and many smaller water courses, drainage basins, and other types of ecosystems do not conform to the abstract reality of political borders. The Poplar and Milk Rivers as well as Glacier/Waterton



Park and the tributaries of the Flathead River draining into Flathead Lake are all examples of natural phenomena which ignore the 49th Parallel. While Canada is much larger than the U.S. in sheer territorial expanse, Canada's population of roughly 25 million is 10 times smaller than that of the United States. It is important to note that over 80 percent of Canadians live within 100 miles of the U.S. border. Industrial projects and related development activities thus have a disproportionate impact on the country with a smaller and more highly concentrated population. Moreover, the border regions near the 49th parallel are perceived quite differently by the respective national groups and authorities. For U.S. citizens, the Northwest is considered an area which ought to be protected whereas Canada's southwest (as in the U.S.) is considered ripe for development.

On environmental questions, Canadians may be no more or less concerned about or committed to preserving environmental quality than their neighbors to the south. It would be difficult to prove one way or the other. For a host of largely cultural reasons Canadians appear to be more consistent in their preferences and value choices, however. Popular interest and official involvement in environmental conservation has grown slowly and steadily in Canada, and it is unlikely to be reversed, in spite of the fact that the public has fewer opportunities to influence environmental policy in Canada than in the U.S. By contrast, the United States has and continues to experience more radical shifts in opinion on the importance of pollution and other environmental problems. During much of the past decade,





for example, groups of ecologically-minded individuals were successful in swelling their ranks to the depth and proportion and significance of a large-scale social movement. A great deal of national legislation such as NEPA was enacted as a result of this surge of interest and concern during the 1970s. While recent polls indicate that a majority of Americans still consider high air and water quality standards fundamental to their preferred style of living, these sentiments are not being reflected in the policies of the current administration and the legislative initiatives of many members of Congress.

Other political and economic factors are also important when considering the ways in which transboundary pollution problems are dealt with by the respective governments. While there are some basic similarities, U.S. federalism and Canadian federalism are quite different constructs. Canada's provinces enjoy greater powers than do the states of the Union, notably with respect to land-use planning. On the other hand, environmental policy and, to a certain extent, industrial policy, are more highly centralized in Canada than in the U.S. While each country is the other's chief trading partner, there is a basic asymmetry in the overall importance of transboundary exchanges of manufactured goods and financial capital. In the simplest of terms, the United States' economic power relative to that of Canada is analogous to their respective populations; that is weighted in favor of the U.S. by a ratio of ten to one. The relative costs and benefits of implementing laws to control transboundary pollution are often skewed in a similar pattern.



Regional differences also color the perceptions of various interest groups in both countries and further complicate pollution issues. Westerners in Canada and the United States alike tend to take a dim view of federal involvement in their economic affairs; they maintain a highly individualistic frontier mentality and often disregard the environmental concerns of "Easterners" as insincere--a sort of camouflage for ambitious plots to exploit the region's natural resources and undermine the relative social stability of its communities. In the adjoining regions along the Canadian-American boundary, some adjacent frontier localities enjoy exceptional relations because they belong to an identical socioeconomic entity [e.g. timber and mining-based communities] and do not compete in their dealings with the same central authority.

Despite all these differences in cultural makeup, political outlook and demography, and at least partially as a result of the openness of the border to natural integrative forces, the United States and Canada have experienced more than a century of close and amicable relations. Disregarding certain periods of tension and certain policies on both sides of the border which have reinforced Canadians' will to maintain a separate cultural and political identity, the symbiosis of interests has been mutually beneficial. This broad affinity has even generated a terminological shorthand for diplomats and specialists in U.S.-Canadian foreign relations: the two countries are often said to enjoy a "Special Relationship," or more resoundingly the Special



Relationship, which is generally thought to be flexible but permanent.

Due to a number of interrelated changes in government policy in both countries, the Special Relationship is for the moment having to withstand considerable pressure. While issues concerning bilateral trade, foreign investment, fisheries management, energy pricing, and fiscal and monetary policy have no obvious direct bearing on transboundary pollution problems, they do tend to alter the climate in which arrangements to settle or manage environmental disputes are negotiated.

The Acid Rain issue has arisen at precisely the same time when legislators and diplomats are having to confront a whole range of other problems gaining public recognition. Issue linkages may not be altogether rational or likely to produce the most desirable policy outcomes, but they are unavoidable, especially in places (like the U.S. Congress) where people empowered to make authoritative decisions are directly accountable to voters and well-organized, well-financed interest groups. Acid rain could literally and figuratively poison the normally benign atmosphere shared in common by the United States and Canada. Consequently other transboundary pollution issues, several of which will be looked at here, might in the future be handled in a more overtly political and divisive way than in the past.

There is a large and growing number of air and water pollution issues which directly involve important U.S. and



Canadian interests. Most of these problems are being studied, monitored, or otherwise managed by the International Joint Commission, whose powers and functions are explained below. Several other issues fall outside the purview of the Commission and are worthy of mention. Offshore drilling in the Beaufort Sea (and in the Atlantic), the transshipment of crude oil along the coast of British Columbia (including the Queen Charlotte, Georgia, and San Juan de Fuca Straits), the Arctic Waters Pollution Prevention Act (Canada), and the ecological impact of oil and gas pipelines across the continent are all matters of significant environmental and political importance to both governments and many citizens. While economic factors far outweighed environmental considerations in the Columbia River Treaty and the agreement to jointly finance and manage the St. Lawrence Seaway, these too are enormously important examples of transnational cooperation between the U.S. and Canada.

Finally, it must be remembered that the two countries play very different roles in the international system. The United States has immense global interests and corresponding responsibilities. Canada has different priorities. According to Maxwell Cohen, a Canadian who has served on the IJC, Canada's "most urgent considerations are much more restricted in their geography, if not in imagination." Cohen has described four "neighborhoods" which preoccupy Canadian concerns: Continental, Arctic, North Pacific, and North Atlantic. Each provides an area of geopolitical or geoeconomic interest that stimulates a continuous balancing of objectives. Particularly in regard to





the United States (the Continental neighbor), Canada is compelled to demonstrate her sovereign independence. The United States acts in ways designed to command respect for its strength, dynamism and leadership role on a global scale.

All of these things should be tendered at the back of one's mind when analyzing transboundary pollution problems in greater detail. The larger issues and trends may not be relevant in a strict sense to the limited dimensions of a particular dam or a water diversion scheme, but they inevitably enter into the consciousness of those officials charged with the duty to make recommendations and ultimately render binding decisions and judgments.

#### PROCEDURES AND ROLES FOR THE INTERNATIONAL JOINT COMMISSION

##### Formal/Technical

The International Joint Commission is a permanent bilateral body composed of six Commissioners, three from each country, who act as a unitary body seeking common solutions to problems of common interest along the U.S.-Canadian border. The IJC was created by the Boundary Waters Treaty of 1909 to prevent disputes and settle questions, and was authorized to serve a number of functional roles: quasi-judicial, (or regulatory), investigative, administrative and arbitral.

The Commission's quasi-judicial role involves approving or rejecting applications from public or private entities which have proposed to obstruct, use, or divert boundary or transboundary



waters. Most applications concern small-scale hydraulic engineering projects. The 1909 Treaty requires the Commission to observe the following order of precedence among the various uses of boundary waters:

- 1) uses for domestic and sanitary purposes
- 2) uses for navigation
- 3) uses for power generation and irrigation purposes

The applicant is responsible for furnishing information required by the Commission to render its decision. Interested parties may intervene in support of or in opposition to an application. Public hearings are held in the area concerned. The Commission's decision is final, and usually an international Board of Control (staffed by technically-skilled people from both countries) is formed to ensure that the terms of an order of approval are met.

The Commission's investigative role is the most important to date. Either or both governments can request the IJC to investigate and report on any matter pursuant to the provisions of the Boundary Waters Treaty. Questions of this sort are called References. The Commission acts primarily as a fact-finding body and supplements its own efforts by appointing technical boards of inquiry made up of officials from local, state/provincial, and federal agencies. In most cases the people who serve on these boards are scientists and engineers from such agencies as the Environmental Protection Agency, the Bureau of Reclamation and the Corps of Engineers. The parent agencies in both countries continue to pay the salaries of individuals selected to participate. (see attachment for IJC organizational structure.)



The technical boards conduct the necessary research and file a report with the Commission, which, upon reviewing the document, may request further study. Public hearings are frequently held during the investigative stage of a Reference and invariably are scheduled after the IJC publishes a board report. The Commission can issue subpoenas and administer oaths to witnesses. Next the Commission writes its own report (which can differ from that of a board), and submits it, with recommendations, to the respective governments in Ottawa and Washington. The Commission's decisions on References are not binding; it is up to the central governments to decide what, if any, action should be taken on any particular matter.

The administrative functions of the Commission consist primarily of monitoring and coordinating the implementation of IJC recommendations which have been accepted by the governments. It also monitors compliance with orders of approval granted for applications. Under the provisions of Article X of the Treaty, any questions or differences arising between the Parties involving the rights, obligations, or interests of the United States or Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by consent of both Parties. As previously noted, however, this arbitral capacity has not been utilized in the past, and will probably remain unused (in a formal sense) in the future.

The United States Commissioners are appointed by the President with the advice and consent of the Senate. Canada's



members are chosen by the Governor in Council, with the Prime Minister's tacit approval. The Commission includes Canadian and American Co-Chairmen who serve in their positions on a full-time basis. The other four Commissioners serve part-time. The IJC maintains small professional staffs at its offices in Washington, D.C., Ottawa, and Windsor, Ontario. (The latter office was established in 1973 to assist the Commission and its Boards in carrying out their tasks under the Great Lakes Water Quality Agreement.)

Each Commissioner makes a solemn declaration to act faithfully and impartially in performing the duties imposed by the Treaty. Thus Commissioners serve in a private professional capacity, and not as official representatives of their respective governments. Decisions within the Commission are reached by majority rule. If the Commission is equally divided on an issue, either a joint report or separate reports may be prepared and submitted to Washington and Ottawa. Only three times in its history (covering nearly one hundred questions, or "dockets") has the Commission divided along national lines or otherwise failed to reach a consensus. The impartiality of Commission investigations and recommendations is essential to its image and credibility as a problem-solving institution.

Canada and the United States have both made increasing use of the Commission's investigative powers in recent years. Over 50 percent of its assignments between 1953-72 were References, compared to only 26 percent during its first 20 years of





existence. This trend reflects the growing demands being placed upon North American water resources, a heightened awareness of the consequences of environmental degradation, and the confidence both governments have in the Commission's ability to study difficult bilateral problems and to tender recommendations in an impartial fashion.

#### Informal Roles and Other Factors

Despite the IJC's political image and design, it is not a machine that moves without squeaking and without causing or encountering some friction. Don Munton, a Canadian analyst who writes on transboundary environmental issues, insists that the Commission quite regularly performs a considerable variety of informal roles with political characteristics and political consequences. "Role" being understood to mean "a patterned sequence of action in a particular political situation," and "political" referring to behavior pertaining directly to the authoritative allocation of resources. Munton sets forth the following typology of IJC activities directed toward four distinct types of recipient:

Toward Polluters:	the Commission acts as "Environmental Conscience"
Toward Publics:	"Sounding Board" and "Publicist"
Toward Governments:	"Policy Innovator" "Agenda Setter" "Draftsman" "Policy Adviser" "Prod" "Interest Group" "Defuser"



Toward Governmental  
Agencies:

"Communications Forum"  
"Coordinator"  
"Refugee-Observer"  
"Ally-Advocate"

While Munton elaborates at length on each informal role, for our purposes the descriptive labels are adequately self-revealing. Variations on these thematic functions for the IJC have also been suggested. The Commission has served in the past to cool-off highly contentious issues which the governments were having difficulties coming to an agreement on and which were threatening to escalate beyond easy control. The Acid Rain issue comes readily to mind in this context, but for a variety of reasons it is unlikely that the Commission could adequately absorb the diverse and considerable energies involved in such an overreaching matter without itself "heating up" to an uncomfortable degree.

Personalities also figure into the informal workings of the Commission, as does the timing of appointments and the criteria by which Commissioners are chosen. Traditionally, at least two of the U.S. Commissioners were drawn from the pool of technically-oriented staffs of the Federal Power Commission (now FERC) and the Corps of Engineers. Commission chairmen typically had some legal expertise and political experience. A similar general pattern has been true in Canada's selection process as well, with Commissioners coming from the Department of External Affairs and the Department of Justice. This has been changing of late, at least on the U.S. side.



President Reagan fired all three Carter-appointed Commissioners shortly after taking office. The new Chairman is a former legislator from upstate New York and served as the head of the patronage office in the Reagan transition team. The other two Commissioners are also Republicans, one having been deputy campaign manager for Reagan-Bush and the other a state senator from Illinois. There is some concern already within the professional staff ranks at the Washington office that the Commission may suffer a credibility problem if appointments will in the future be made on the basis of political loyalty rather than administrative competence and environmental expertise. Somewhat ironically, the Environmental officers at the Canadian Embassy in Washington seem pleased with the new Chairman (probably because as an upstate New Yorker he has a better-than-average knowledge of Canada), even though the former Chairman was a more outspoken and overtly committed environmentalist.

The importance of the internal politics of the Commission is difficult to gauge, but presumably personality conflicts and diverse working styles have at least as much or as little impact on the smooth operation and management of the Commission as they do in other public agencies of similar size.

Finally, size itself is a factor which affects how the Commission performs both its formal and informal roles. With fewer than 50 people employed full-time, the Commission can hardly be decribed as an unwieldy bureaucracy. The IJC is essentially a skeleton organization, but the paucity of staff resources is more than compensated for by the power under the



usual term of reference to call upon any department in either country for technical assistance. With an expanding workload, the Commission might have to beef up the administrative capacities of its three offices. Increasing the number of Commissioners would probably hurt more than help the IJC's standing as an objective and consensus-prone organization.

## Conclusions

A number of important general principles concerning transboundary pollution and environmental cooperation have been established in International Law and adhered to in a variety of cases involving the United States and Canada. By treaty and through the workings of the International Joint Commission, both countries have acknowledged a duty not to pollute the environment to the detriment of one another's public health and economic welfare. When one state fails to carry out this duty, either through its own culpable activities or those of a company or individual within its jurisdiction, the other has a valid claim to compensation for damages. When disputes have arisen between the U.S. and Canada over transboundary pollution issues, negotiation and other peaceful means have been used regularly to arrive at reasonable settlements.

Certain other principles of the international legal and political system can sometimes work at cross-purposes to the ecological sensibility and economic logic which underlies cooperation on environmental matters. Many transfrontier pollution problems along the U.S.-Canadian border have affected





populations in both countries simultaneously, and consequently an objective common interest in controlling the pollution has led to many instances, great and small, where joint actions were taken and joint management activities proved useful and effective. In some cases, however, the disproportionate impacts of pollution (and pollution control) on Canada, whose population is more vulnerable and whose sovereignty is perceived to be less secure than that of the United States, have helped to swell antagonism in frontier zones where in other matters natural integrative forces are at work.

The contradiction between the principle of sovereignty and the rationality of cooperation has been mitigated to a considerable degree by the International Joint Commission, which has a structure and history which suggests that equitable agreements between countries of different strength, character, and size can indeed be worked out. The IJC has served well in facilitating negotiation through its fact-finding, reporting and monitoring procedures. The Commission's greatest asset is its credibility in the eyes of both governments, and to a large extent that credibility stems from the impartiality of the Commissioners themselves and the scientific validity of the data they receive from technical boards working in the field. The Commission is probably not equipped to handle large and complicated issues such as acid rain, which by its very nature involves other, large-scale economic issues and which is being linked to other matters of mutual concern in order to serve political interests of each respective government. Other means



of reaching agreement on environmental questions may be necessary. Arbitration is an attractive alternative, but neither country is predisposed to resort to third party intervention of this sort, and the environment might not be able to withstand the delays.

To say that environmental disputes between the United States and Canada could prove explosive in the months and years to come would almost certainly be an exaggeration, since explosions of any kind are rare in the context of bilateral relations in North America. The issues are quite serious, however, both in a political and environmental sense. Failure to resolve them equitably and swiftly could lead to a poisoning of hitherto amicable relations.





